Gift Giving and Entertaining Without Violating the FCPA and UK Bribery Act

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ACC Houston Chapter
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Anti-Bribery Laws

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- U.S. Foreign Corrupt Practices Act
- UK Bribery Act
Trends In Enforcement

• The FCPA continues to be one of the highest enforcement priorities of the SEC and DOJ and this is not likely to change any time soon.

• Other countries and the OECD are now actively engaged in similar efforts.
OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
OECD Anti-Bribery Convention

Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

- Purpose is to reduce corruption in developing countries to create a level playing field for conducting international business
- Encourages sanctions against bribery in international business transactions of companies based in the Convention member countries
- Member countries are required to
  - Criminalize the act of bribing a foreign public official (similar to FCPA)
  - Enforce the laws
- The OECD has no authority to implement the convention
- OECD monitors implementation in a two-phased examination process
  - Phase I - OECD reviews legislation implementing the conventions in the member country and evaluates adequacy of the laws
  - Phase 2 - OECD assesses the effectiveness of enforcement
OECD Member Countries

Presently, 39 countries have agreed to the convention:

- Argentina
- Australia
- Austria
- Belgium
- Brazil
- Bulgaria
- Canada
- Chile
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Iceland
- Ireland
- Israel
- Italy
- Japan
- Luxembourg
- Mexico
- Netherlands
- New Zealand
- Norway
- Poland
- Portugal
- Russia
- Slovakia
- Slovenia
- South Africa
- South Korea
- Spain
- Sweden
- Switzerland
- Turkey
- United Kingdom
- United States
Foreign Corrupt Practices Act (FCPA)
FCPA Generally

- The FCPA prohibits individuals and companies from bribing foreign officials, either directly or indirectly through intermediaries.
- The FCPA is extremely broad in scope.
- It applies to US businesses and nationals in furtherance of unlawful payments anywhere in the world, even payments that take place outside the U.S.
Who Falls Under the FCPA’s Jurisdiction?
Business Entities Subject to the FCPA

- **“Issuers” - corporations that**
  - Have securities registered in the United States; or
  - Are required to file periodic reports with the SEC
  - Basically, all publicly-traded U.S. companies

- **Subsidiaries of “issuers”**
  - Domestic subsidiaries
  - Foreign majority-owned subsidiaries

- **Domestic concerns**
  - Principal place of business in the United States; or
  - Organized under the laws of a state or territory

- **Foreign entities**
  - When means or instrumentality of interstate commerce is used in furtherance of a prohibited payment, i.e., act in furtherance of FCPA violation occurs in the U.S. through
    - Email
    - Mail
    - Telephone
    - Other
Persons Subject to the FCPA

- Any citizen, national, or resident of the United States
- Officers, directors, employees, agents, or stockholders of “issuers”
- Any non-United States citizen:
  - When conduct occurs while in the United States; or
  - When instrumentalities of interstate commerce are used
    - Telephone
    - Mail
    - Email
    - Facsimile
    - Wire transfer
    - Other U.S. banking transaction
TWO Parts of FCPA

Part 1: Anti-Bribery

Part 2: Books and Records
Anti-Bribery
It is unlawful for any persons or entities covered by the FCPA to corruptly make any offer, payment, promise to pay, or authorization of the payment of any money, or offer, gift, promise to give, or authorization of the giving of anything of value to any foreign official, foreign political party or party official, or any candidate for foreign political office.

The word **bribery** does not appear in the FCPA

A payment or offer is **corrupt** if it is made intentionally and voluntarily for the purpose of

- Influencing any **act or decision** of such foreign official, political party, party official, or candidate in his or its official capacity
- Inducing such foreign official, political party, party official, or candidate to do or omit to do any act in violation of the lawful duty of such foreign official, political party, party official, or candidate
- **Securing** any improper advantage
- Inducing such foreign official, political party, party official, or candidate to use his or its influence with a foreign government or instrumentality thereof to affect or influence any act or decision of such government or instrumentality, in order to assist **in obtaining or retaining business** for or with, or directing business to, any person
Breadth of Anti-Bribery Provision

- Instead of using the word bribe, the FCPA forbids a list of inducements: an offer, promise, authorization, or payment of **anything of value** to a foreign official
  - To obtain or retain business; or
  - To secure any other improper advantage
- The anti-bribery provision of the FCPA covers virtually any improper payment made in a business context
- Bribes may result in criminal or civil charges
The FCPA Means

No Bribing Foreign Officials
Who is a Foreign Official?
Foreign Official Defined

- Any officer or employee of a foreign government or any department, agency, or instrumentality thereof
- Employees of state-owned or controlled companies
- Any officer or employee of a public international organization
- Any person acting in an official capacity for or on behalf of a foreign government or government entity or of a public international organization such as the United Nations, the World Bank, etc.
- Any foreign political party, party official, or any candidate for foreign political office
- Immediate family members of any of the above
The DOJ considers instrumentalities of a foreign government to include state-owned or controlled companies

• Example: In many countries, oil companies, hospitals, and other businesses are owned by local or national governments or government owned or controlled companies, and employees are on the government payroll—as such, they can be considered "foreign officials," making payments to them potentially illegal

• In many instances, employees of such companies are not treated or thought of as government officials in their home country

• The DOJ and SEC, however, consider them to be foreign officials

• Any questions relating to whether an individual is a “foreign official” should be directed to your company’s compliance officer
What is a Bribe?
Examples of Improper Payments

Any payment to gain an improper business advantage:

- Prevent or diminish some governmental action, such as the imposition of a large tax or fine, or the cancellation of an existing government contract or contractual obligation
- Obtain a license or other authorization from a government where the issuance involves the foreign official’s or his/her government’s discretion
- Obtain confidential information about business opportunities, bids or the activities of competitors
- Obtain the right to open an office, to secure a zoning ruling or to influence the award of a government contract
Improper Payments, Cont’d

Any payment to:

• Influence the rate of taxes that would be levied on the company’s business
• Obtain relief from government controls, foreign regulations, or the application of regulatory provisions
• Resolve governmental disputes, for example the resolution of tax deficiencies or a dispute over duties payable
• Resolve commercial litigation in foreign courts
Prohibited Types of Payments

- Cash payments
- Non-cash payments, including gifts, benefits, and favors
- Medical, educational, or living expenses
- With certain limited exceptions, travel, meals, lodging, shopping, or entertainment expenses
Indirect Payments Prohibited

- The FCPA prohibits improper payments whether they are made directly or indirectly through third parties, such as consultants, agents, and/or joint venture partners.
- A company can face FCPA liability based on improper payments made by its agents or other business partners, whether or not the company knew of the payments.
- Knowledge includes conscious disregard and deliberate ignorance of facts which indicate a high probability that an improper payment will occur.
Part 2: Books and Records
FCPA Accounting Provisions

- Often called “books and records” provision
  - Applies only to publicly traded U.S. companies (“issuers”)
  - Issuers must make and keep accurate books and records
  - Record who, where, when, what, and why entertained
  - Issuers must devise and maintain a system of internal accounting controls that ensure that all transactions and dispositions of assets occur only with management’s authorizations, and that all such transactions are recorded accurately and in reasonable detail in the companies’ books, records and accounts
- Knowingly falsifying any book, record, or account of an issuer may result in a criminal prosecution
- Although these requirements do not apply to private companies, the government would certainly consider them to be “best practices” and a failure to have controls would be viewed with disfavor
“Books and Records” Violations

- Making records appear to show a payment to one person when, in fact, the payment was made to someone else
- Creating or maintaining a “slush fund”
- Submitting false or inaccurate expense account reports
- Creating records that inaccurately characterize the true nature of a transaction or payment, for example
  - Reporting an “overhead expense” instead of “commission”
  - Reporting a facilitating payment to a foreign immigration official as a “travel expense” or “immigration expense”
  - Reporting a “bribe” as some other legitimate expense
UK Bribery Act
The UK Bribery Act

- The UK Bribery Act outlaws for **individuals**
  - Bribing anyone
    - Includes all forms of commercial bribery between private parties
  - Taking a bribe
    - Includes any kind of kickback
  - Bribing a foreign public official
The UK Bribery Act

• The UK Bribery Act outlaws for **corporations**
  • Failing to **prevent** bribery
    • Imposes corporate liability for failure to prevent
  • An **associated person**
    • Employees, agents, subsidiaries, joint ventures
    • From bribing or attempting to bribe another person
    • With the intention of obtaining business, or an advantage in the conduct of business
  • Imposes **strict liability** without any showing of knowledge or intent
The UK Bribery Act

- The UK Bribery Act outlaws for **senior corporate officers** with close ties to the UK
  - Any senior officer
  - Who consented to the offense
  - Will be guilty of the same offense and
  - May be prosecuted
Breadth of UK Bribery Act

- UK Bribery Act is said to be the **toughest anti-bribery law** in the world
- Its jurisdiction is world wide, with little connection to the UK
- It imposes **strict liability** on corporations
- It includes commercial bribery and is not limited to bribery of foreign officials
- It includes making or taking bribes
- The Serious Fraud Office (SFO) is charged with enforcing the Act
Who is Subject to the Act?
Jurisdiction

- The Act applies to any company, UK or foreign, if
  - Any act or omission takes place in the UK, or
  - The company carries on some part of its business in the UK and the act or omission takes place anywhere in the world
- A relatively minor connection with the UK could bring a U.S. company’s global activities within the jurisdiction of UK authorities
Defenses Available Under the FCPA or UK Bribery Act
Defenses and Safe Harbors Available Under the FCPA or the UK Bribery Act

- FCPA
  - Facilitating payments exception
  - Written local law defense
  - Promotion defense

- UK Bribery Act
  - No facilitating payments exception
  - Allows consideration of written local laws
  - No promotion defense
FCPA Facilitating Payment Exception

- The FCPA does not prohibit “facilitation payments” or “grease payments”
  - Made for the purpose of expediting or securing routine governmental action
  - To which the payor is entitled
- The exception does not apply to routine governmental action to which the payor is not entitled or where discretionary action is involved
- Although the FCPA does not contain a value limit on the amount of a facilitation payment, the U.S. government is unlikely to view a payment exceeding $500 as falling within this exception
- All facilitation payments should be accurately recorded as such in the company’s accounting records
- Because the UK Bribery Act does not allow facilitating payments, your company should consider a zero tolerance policy that prohibits these payments
Examples of Routine Government Action

• Providing police protection, mail pick-up and delivery, and similar services
• Routine processing of governmental papers that involves no exercise of discretion, such as passports, visas, and work orders
• Scheduling inspections associated with contract performance or related to transit of goods across country
• Providing phone service, power and water supply, and similar services
• Loading and unloading cargo, or protecting perishable products or commodities from deterioration
• Actions of a similar nature
• Any action involving discretionary decision making, such as selecting which goods or services to purchase, would not be covered under this exception
Example of Routine Government Action

An example of a permissible payment for a routine governmental action:

• A person is at the airport in a foreign country with the appropriate visa and passport

• The immigration official requires a payment of US$20 to stamp the passport, or the person will be required to sit and wait in the airport for an undetermined amount of time

• In this case, the person is entitled to have the passport stamped and the small payment is simply made to expedite the process

• This payment would not be a violation of the FCPA
Example of Non-Routine Government Action

An example of an improper payment:

• A person is at the airport in a foreign country with his passport, but the visa *has expired*

• The immigration official requires a payment of US$20 to stamp the passport, or the person will be returned to the country of origin, or put in jail

• Here, the person is **not entitled to have the passport stamped** so the small payment is an illegal bribe to get something to which he is not entitled

• This payment would constitute a **violation of the FCPA**
Example of Discretionary Government Action

- The company is applying for a license with a governmental agency.

- The granting of the license is **not a matter of right**, but is available under certain circumstances which **may involve a decision** by a government official as to whether to grant the license.

- The licensing agent requires a payment to issue the license.

- Here, the governmental action involves a discretionary action and the payment is **prohibited under the FCPA**.
FCPA and UK Bribery Act - Lawful Under Foreign Law Defense

- The FCPA provides an affirmative defense that the payment, gift, offer, or promise of anything of value that was made, was **lawful** under the **written laws** and regulations of the foreign official’s, political party’s, party official’s, or candidate’s country.

- The UK Bribery Act allows consideration of written local laws, so if it is lawful under local law, presumably it will be allowed under the Act.

- Since bribery is technically illegal in virtually all countries, this provision is likely to have **very limited applicability**.

- That bribery is an **accepted practice** in the foreign country is **not sufficient**.
The FCPA contains an affirmative defense for certain payments that are directly related to:

- The promotion or demonstration of the Company’s products or services or
- The performance of a particular contract with a foreign government or instrumentality

Examples:
- Modest entertainment
- Meals
- Company logo promotional items
- Gifts of a nominal value
- Other business courtesies

The UK Bribery Act does not have a similar defense but addresses some of these issues in its adequate procedures safe harbor
FCPA and the UK Bribery Act Provide Safe Harbors For Adequate Procedures

UK Bribery Act

- Corporation may avoid liability if it had **adequate procedures** in place to prevent bribery
- Adequate procedures should include:
  - Top level commitment
  - Due diligence
  - Policies and procedures
  - Training
  - Effective implementation, monitoring, and review

FCPA

- These are the same factors the DOJ and SEC *informally* consider in determining corporate culpability under the FCPA
Adequate Procedures

- **Top level commitment**
  - Zero-tolerance policy for bribery
  - Consequences for violations
  - Dissemination of written policies
  - Senior manager overseeing the program
    - Company management and the board of directors must exercise the proper “tone at the top” and diligently follow up on indications of improper activity by employees and foreign agents
    - This will help prevent violations
    - If a violation is detected, it will help ensure that the company is favorably viewed by the government in any potential investigation
Adequate Procedures

• **Policy and Procedures**
  • Adopt comprehensive anti-bribery policies
  • Provide periodic reminders to employees of the importance of compliance
  • Require annual employee acknowledgements that they have not violated the anti-bribery laws and are not aware of any potential violations by others
  • Maintain documents showing due diligence on international joint venture partners, foreign sales agents/consultants, and acquisition targets with foreign operations
  • Implement internal controls designed to detect and prevent FCPA violations
Adequate Procedures

• **Due diligence**
  
  • Should be conducted on all parties to business relationships, particularly those who interact with government officials, including
    
    • Supply chain
    • Intermediaries and agents – largest bribery risk
    • Joint venture partners
  
  • Performed in advance of relationship, including
    
    • Screening
    • Anti-bribery contract language
    • Policies on gifts and entertainment
    • Policies on facilitating payments and bribes
    • Procedure to investigate and resolve problems
Adequate Procedures

• **Training**
  
  • Comprehensive training programs at all employee levels
    
    • Training should be based on risk, such as interaction with foreign officials
  
  • Special training for staff in high risk jurisdictions
  
  • Company must maintain documentation of employee training

• **Implementation, monitoring and review**

  • Companies must continually review personnel and records to ensure compliance
    
    • Consider anti-bribery as part of internal audit function
  
  • Continue to monitor third-party relationships for compliance with the anti-bribery laws
  
  • Annual certification and audit procedures should be implemented
Example of Adequate Procedures Saving A Company From Prosecution

- **Morgan Stanley**
  - In 2012, the DOJ and SEC **declined to prosecute** Morgan Stanley in relation to its employee who had pleaded guilty to violating the FCPA
  - Morgan Stanley was praised for its best practices
    - Morgan Stanley trained Peterson on anti-corruption policies and the FCPA at least seven times between 2002 and 2008
    - Peterson received from Morgan Stanley at least thirty-five FCPA-compliance reminders
    - Morgan Stanley had a sufficient system of internal controls
    - Peterson intentionally evaded the controls
Morgan Stanley maintained a **system of internal controls** meant to ensure accountability for its assets and to prevent employees from offering, promising or paying anything of value to foreign government officials. Morgan Stanley’s **internal policies, which were updated regularly to reflect regulatory developments and specific risks, prohibited bribery** and addressed corruption risks associated with the giving of **gifts, business entertainment, travel, lodging, meals**, charitable contributions and employment. Morgan Stanley **frequently trained its employees** on its internal policies, the FCPA and other anti-corruption laws. Between 2002 and 2008, Morgan Stanley trained various groups of Asia-based personnel on anti-corruption policies 54 times. During the same period, Morgan Stanley trained Peterson on the FCPA seven times and **reminded him to comply with the FCPA** at least 35 times. Morgan Stanley’s compliance personnel regularly monitored transactions, **randomly audited particular employees, transactions and business units**, and tested to identify illicit payments. Moreover, Morgan Stanley conducted **extensive due diligence on all new business partners** and imposed stringent controls on payments made to business partners.

Peterson conspired with others to circumvent Morgan Stanley’s internal controls . . .
Example of Adequate Procedures Saving A Company From Sanctions

- **Global Industries**
  - In 2010, the DOJ and SEC **declined to take any action or sanction against** Global Industries at the conclusion of its three-year self reported internal investigation into bribery in West Africa through its customs clearing agent, Panalpina
  - The DOJ praised Global Industries for its best practices
    - Global Industries adopted FCPA policies in the late 1990s
    - Global Industries had FCPA contract language in its contracts with Panalpina as early as the 1990s
    - Global Industries trained its West Africa personnel on anti-corruption policies and the FCPA
    - Global Industries obtained signed certifications from its West Africa employees that they were in compliance with the anti-corruption laws and were unaware of any violations by others
  - Andrews Kurth conducted the investigation on behalf of Global Industries’ Audit Committee
Gifts, Entertainment and Travel: What is Allowed?
Gifts, Entertainment and Travel Expenses

- Gifts of nominal value, preferably with the company logo
- Usual company expense policy applies to airfare, lodging, meals and entertainment, including for foreign officials
  - First class airfare only consistent with company policy
- No lavish meals or entertainment
  - Even if technically within company policy
  - Ordinary business entertainment can run afoul of the FCPA or UK Bribery Act
- No limousines or other extravagant transportation
- No expenses for spouses
- No company-paid side trips
- No unusual itinerary through tourist attractions
Entertainment and Travel

- No cash payments to third parties or foreign officials for travel expenses, spending money, etc.
- If per diems are required by the foreign government, they should be permitted only with advance written approval of the CFO, General Counsel, or Compliance Officer
- If possible, payments should be made directly to vendors (e.g., airlines, hotels, car rental companies) and not to the third party or foreign official
- Where direct payment is not possible, reimbursement is contingent upon the provision of written receipts for the expenses
Seminal Case on Travel and Entertainment: Lucent

• Lucent Technologies Inc. spent millions of dollars on approximately 315 trips for Chinese government officials primarily for sightseeing, entertainment and leisure, including
  • Pre-sale trips to attend seminars and visit Lucent facilities, included sightseeing, entertainment and leisure activities
    • Between 2000 and 2003, Lucent spent over $1.3 million on at least 65 pre-sale trips
    • In 2002 and 2003, Lucent sponsored 24 pre-sale trips; at least 12 trips were mostly for sightseeing
  • Post-sale trips were characterized as “factory inspections” or “training”
    • By 2001, Lucent no longer had any Lucent factories
    • Lucent still provided such trips to the United States, Europe, Australia, Canada, Japan and other countries, primarily to locations such as Disneyland, Universal Studios, the Grand Canyon. The trips typically lasted 14 days each and cost between $25,000 and $55,000 per trip.
  • Many of Lucent’s payments were not directly related to legitimate business purposes and were not recorded accurately in its books and records
Seminal Case on Travel and Entertainment: Lucent

- Lucent settled with the DOJ and the SEC for $2.5 million
  - $1 million criminal fine
  - $1.5 million in civil penalties
- The DOJ’s Non-Prosecution Agreement (“NPA”) requires Lucent to
  - Adopt new or modify existing internal controls, policies and procedures
  - Ensure that Lucent **makes and keeps fair and accurate books, records and accounts**
  - Adopt **a rigorous anti-corruption compliance code**, standards, and procedures designed to detect and deter violations of the FCPA and other applicable anti-corruption laws
- Lucent will not be prosecuted if it complies with all of the requirements contained in the NPA for two years
- Lucent was the first case prosecuted solely for travel and entertainment violations of the FCPA
Recent DOJ Opinion Release Finds Proposed Travel for Foreign Official To Be Reasonable

- FACTS: An adoption services provider proposes to pay certain expenses for a trip to the United States by one official from each of two foreign government departments to learn more about the services it provides
- DOJ says: REASONABLE
Reasonable Expenses

- The adoption agency intends to pay for
  - Economy class air fare,
  - Domestic lodging,
  - Local transport, and
  - Meals
- It intends to pay all costs directly to the vendors, not to the government officials
No Pending Business

• The adoption agency has no non-routine business (e.g., licensing or accreditation) under consideration by the relevant foreign government agencies
Government Travelers

- The adoption agency will not select the particular officials who will travel.
- Instead, the foreign government departments will decide who will make the trip.
No Spouses

- The agency will host only the designated officials, and not their spouses or family members
Souvenirs/Gifts

- Any souvenirs/gifts that the agency gives the visiting officials would reflect the company’s business and/or logo and would be of nominal value
No Compensation

• Apart from the expenses identified above, the agency will not:
  • Compensate the foreign government officials for their visit,
  • Fund, organize, or host other entertainment, side trips, or leisure activities, or
  • Provide stipend or spending money
• The agency has invited another adoption service provider to participate in the visit
Gifts, Travel and Entertainment Dos and Don’ts

Do:

• Entertain modestly
• Provide trips for business purposes, consistent with ordinary company expense guidelines
• Keep accurate records of who is entertained and for what purpose

Don’t:

• Entertain extravagantly
• Provide trips for non-business purposes or to vacation destinations
• Pay for spouses and family members
The US and UK Governments Are Serious About Enforcement

• The SFO prosecutes violations of the UK Bribery Act, but the Act is new and has not yet been enforced in the international context
• The DOJ prosecutes criminal violations of the FCPA
• The DOJ and the SEC jointly enforce civil violations of FCPA
US Enforcement Agencies Are Serious About the FCPA –
Largest Recent FCPA Settlements (Fines and Penalties)

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DOJ Pursues Individual Executives

- DOJ intends to aggressively pursue individual executives under the FCPA
- DOJ believes that jail is a good deterrent
- Passage of time from corporate settlement is not an indication DOJ is not investigating individuals:
  - Siemens is an example
    - Siemens settled in 2008
    - Six Executives indicted in 2011
- SEC intends to pursue individuals with a role in accounting and control violations
Individuals Choose Trial Instead of Settlement

Fines vs. Jail

• Corporations pay fines
• Individuals go to jail if convicted or plea bargain
  • The DOJ has settled many cases with individuals agreeing to long prison sentences, as long as 87 months
• Individuals are going to trial to avoid jail
Criminal and Civil Penalties – Corporations

FCPA:
- Fines of up to $2 million for each violation of the anti-bribery prohibition and $25 million for books and records violations
- Civil penalties up to $500,000 for books and records violations
- Disgorgement of gains associated with improper payments
- Injunction to prevent future violations
- Suspension or banned from doing business with the U.S. government
- Imposition of a corporate monitor

UK Bribery Act:
- Unlimited fine
- Confiscation
Criminal and Civil Penalties – Individuals

**FCPA Anti-bribery Provisions:**
- Up to $10,000 civil fine per violation of the anti-bribery provisions
- Up to 5 years imprisonment per violation of the anti-bribery provision
- Up to $100,000 criminal fine per violation of the anti-bribery provisions

**FCPA Books and Records Provisions:**
- Up to $5 million criminal fine and $100,000 civil fine for knowing violations of the books and records provisions
  - Fines imposed on an officer, director, employee, or agent may not be paid by the issuer
- Up to 20 years imprisonment for knowing violations of the books and records provisions

**UK Bribery Act:**
- Up to 10 years imprisonment
- Unlimited fine
- Director may be disqualified
Countries Rated for Corruption Risk

Transparency International’s Corruption Perceptions Index (CPI)

• Measures the perceived level of public-sector corruption in 180 countries and territories around the world

• Is a "survey of surveys," based on 13 different expert and business surveys
Transparency International Corruption Perception Index

CORRUPTION PERCEPTIONS INDEX 2011
THE PERCEIVED LEVELS OF PUBLIC-SECTOR CORRUPTION IN 183 COUNTRIES/TERRITORIES AROUND THE WORLD
What Is Expected of Companies: Best Practices

• Proper “tone at the top” and a senior executive responsible for compliance
• Method for employees to report violations (“hotline”)
• Written anti-corruption policy given to all employees and receipt acknowledged
• Documented anti-bribery training of employees based on risk, such as interaction with foreign officials
• Periodic reminders to employees of the importance of anti-corruption compliance
• Annual employee acknowledgements that they have not violated anti-corruption laws and are not aware of any potential violations by others
• Documented anti-corruption due diligence on international joint venture partners, foreign sales agents/consultants, and acquisition targets with foreign operations
• Anti-corruption provisions in all agreement with partners, joint venture partners, sales agents/consultants
• Appropriate internal controls designed to detect and prevent anti-corruption violations
• Accurate books and records and compliance audits in high-risk areas
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DENA PALERMO, Partner, Houston and New York Offices. Dena’s litigation practice focuses on commercial cases and corporate investigations. She has extensive experience representing individuals and corporations in business disputes in state and federal courts. In litigation matters, Dena has successfully handled disputes involving breach of contracts, securities fraud, breach of fiduciary obligations, fraud, medical malpractice, individual and mass toxic torts, real estate and tortious interference. Dena’s experience in corporate investigations has included the representation of individuals, corporations and audit committees in investigations and disclosures to the SEC, DOJ and FTC of transactions implicating the Foreign Corrupt Practices Act, Sarbanes-Oxley and the Sherman Act. Dena also counsels U.S. companies with foreign operations regarding compliance with anti-bribery laws, including the FCPA and the U.K. Bribery Act. She received her J.D. in 1983, magna cum laude, from Boston University School of Law where she was Note and Case Editor of Boston University Law Review and her B.S. from Binghamton University in 1980. Dena was a law clerk to former Chief Judge John Singleton of the United States District Court for the Southern District of Texas.